

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE
DIVISION III

CACR06-226

December 20, 2006

WILLIE EDWARD MORRIS
APPELLANT

APPEAL FROM PULASKI COUNTY
CIRCUIT COURT, FIRST DIVISION
[NO. CR04-1730]

V.

HON. MARION A. HUMPHREY,
JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

After a jury trial, appellant was convicted of the kidnapping and rape of a fourteen-year-old girl and sentenced as a habitual offender to concurrent terms of sixty and thirty years' imprisonment. Over his objection, evidence was presented at trial to show that appellant kidnapped and raped a sixteen-year-old girl in a similar manner sixteen days before he raped the younger girl. On appeal, he argues that the trial court erred in denying his objection to evidence of the prior rape because it was barred by Ark. R. Evid. 403 and 404.

We note that Act 536 of 2005 expressly allows admission under Rule 403 of evidence of other sexual assaults in sexual assault cases. Act 536 became effective on March 3, 2005; the trial in this case was held in July 2005. However, we need not decide this case on that

basis because the question presented here is identical to that presented to the Arkansas Supreme Court when it decided appellant's appeal from his conviction for the rape of the sixteen-year-old girl. As in the present case, evidence of the other rape was introduced at that trial. The supreme court upheld that conviction, holding that the similarity of the crimes was such that evidence of the other rape was relevant to show motive, intent, and plan, and that the trial court did not abuse its discretion in allowing that evidence to be admitted under Rule 403. *Morris v. State*, ___ Ark. ___, ___ S.W.3d ___ (October 5, 2006). The evidence presented in the two cases was essentially identical, and the arguments in the present case are indistinguishable. The supreme court's prior opinion is controlling, and we therefore affirm.

Affirmed.

GLADWIN and ROBBINS, JJ., agree.